

# United States Senate

WASHINGTON, DC 20510-3204

December 15, 2006

Office of Passport Policy  
Planning and Advisory Services  
Bureau of Consular Affairs  
United States Department of State  
2100 Pennsylvania Avenue NW  
Suite 300  
Washington, DC 20037

Re: DOS-2006-0329, Department of State Proposed Rulemaking Regarding Card  
Format Passport and Changes to Passport Fee Schedule

In response to Public Notice 5558, I am pleased to provide comments on the proposed rules of the Department of State ("State") regarding a card format passport or "passport card."

Section 7209 of the *Intelligence Reform and Terrorism Prevention Act of 2004*, which was signed into law on December 17, 2004, requires that the Secretary of the Department of Homeland Security ("DHS"), in consultation with State, develop and implement by January 1, 2008 a plan to require U.S. citizens and non-U.S. citizens currently exempt from the passport requirement for travel within the Western Hemisphere to present a passport or other authorized documentation that denotes identity and citizenship when entering the United States. Section 7209 also explicitly directs DHS and State to seek to facilitate the travel of individuals living in border communities as part of the new passport plan.

In response to these provisions, the DHS, in conjunction with State, undertook the development of the Western Hemisphere Travel Initiative ("WHTI" or "Initiative"), and issued an advance notice of proposed rulemaking. On October 28, 2005, I submitted comments to DHS expressing my grave concerns about the economic and social impact that the Initiative is likely to have on border communities in New York and elsewhere along the U.S.-Canada border. Congress then enacted legislation to postpone the implementation of the passport requirement for land and sea travelers to June 1, 2009, or an earlier date if the agencies are able to meet certain requirements set out in the legislation. Now, in this notice of proposed rulemaking, State has proposed a new "passport card" as a passport alternative for citizens undertaking land and sea travel between the U.S., Canada, Mexico, the Caribbean and Bermuda.

The proposed rule is a matter of tremendous importance to my constituents in New York, as well as all Americans who live along the northern border. The security of our nation and its borders must be our greatest priority. However, in imposing new travel restrictions at the border,



we must remain sensitive to the profound economic and social impact new restrictions can have on border communities. There is tremendous and legitimate concern that the Initiative would not only devastate the tourism and retail industry, but also greatly disrupt life on both sides of the American-Canadian border. The notice of proposed rulemaking appears to largely neglect these concerns.

I have voiced reservations about the impact of the Initiative in a variety of different contexts since it was first previewed in April 2005. I have written to both Secretary Rice and Secretary Chertoff on this critical matter. I have submitted testimony to the Senate Foreign Relations Committee and comments to DHS. While I appreciate why DHS and State support the Initiative, I think its approach continues to tilt the balance too far against having a border that is both safe and convenient to cross for most people. I strongly believe that this is an issue on which we can find a solution that protects our security and our economy.

The passport card as described in the notice of proposed rulemaking poses several problems. At the root of these problems are the card's cost and the burden it would impose on U.S. citizen travelers. The card would cost a total of \$45 for an adult and \$35 for a child,<sup>1</sup> a burdensome cost that could prove prohibitive for many families who live in our border communities. In addition to cost, the proposal imposes several hurdles to attaining the passport card. State will issue and adjudicate the passport card in a manner similar to traditional passports. The notice does not mandate a specific turn-around time for an application for a passport card, saying only that it would be the same as for a passport, which is roughly four to six weeks. No exception is allowed for the elderly or groups of minors on trips. No provision is made for day passes or those who appear at a border crossing without the proper documentation.

The practical implications of such a proposal if implemented are enormous. The proposal does little to ease the serious impact the WHTI is likely to have on the tourism and retail industries on both sides of the American-Canadian border. The exchange of goods between the United States and Canada is the largest trading relationship in the world. On average, \$1.1 billion in goods cross the border each day. Thirty-nine states sell more of their products to Canada than to any other export market, and Canada is the second largest market for the other eleven states. Each year, approximately 19.5 million cars and 4.5 million trucks cross entry points between Canada and the State of New York alone. There were 3.8 million visits from Canadians to the State of New York in 2003, and those Canadians spent over \$392 million in the state.

These numbers are likely to decrease dramatically if an individual is forced to purchase a \$45 passport card – or an even more expensive passport – several weeks in advance in order to cross the border. Fewer than 25% of U.S. citizens and 40% of Canadians own passports. One business group in upstate New York recently concluded that it is “unrealistic” to expect millions of citizens to pay for a passport card several weeks in advance to go shopping in a border town. One recent Zogby poll concluded that only 21 percent of Americans without a passport living in

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<sup>1</sup> Specifically, the government would charge an initial application fee of \$20 for an adult and \$10 for a child, plus an additional execution fee of \$25 for all applicants. The execution fee would be required of all first-time adult passport applicants, all minors under the age of 16, and all individuals requesting a passport to replace one that is lost, stolen, or mutilated.



border states would be willing to pay more than \$25 for a new passport card to cross the border, and only 22 percent are willing to wait one month or more for such a card.

The poll goes on to reveal that only 9 percent of Americans without a passport in border states and 17 percent of Canadians would be “very likely” to purchase a new card to enable them to cross the border. More than a third of Americans in border states without a passport, and nearly a third of Canadian non-passport holders, would be less likely to cross the border if they needed a passport or other secure document to do so. In fact, a separate survey by the Niagara Parks Commission concluded that for 36% of Americans and 37% of Canadians interviewed a new passport requirement would “severely curtail the number of times I would cross the border.”

A decrease in cross-border travel would be devastating to the economies of both the U.S. and Canada. The impact would cripple border communities such as the Buffalo-Niagara region in New York. According to the Buffalo Niagara Partnership (Partnership), which represents nearly 3,000 employer members, requiring a passport for entry into the U.S. will devastate the tourism and retail industry on both sides of the U.S.-Canada border. “[M]ajor tourism developments, such as the over \$100 million Bass Pro Project in Buffalo, are being planned based, in part, on the substantial buying power of Canadians in Metro Toronto and Southern Ontario. The Buffalo Bills and Buffalo Sabres are dependent upon ticket sales to fans from Southern Ontario who have the option of watching the games on television rather than in person.”

Areas such as the North Country of New York would also feel a profound impact. According to the Plattsburgh North Country Chamber of Commerce and its thousands of members, “to require passports (or NEXUS cards where available) for U.S. and Canadian citizens to cross the U.S.-Canadian border... will substantially discourage cross-border travel” and “will depress travel and economic benefit” for both nations.

The requirements of the WHTI would also impose an unfair burden on the people of the Mohawk Nation of Akwesasne. They presently live on a number of territories stretching along the Ottawa and St. Lawrence Rivers, by Lake Ontario and beyond, all the way to Brantford, Ontario, Canada. The territory called “Akwesasne” straddles the international boundary of Canada and the United States, and the national boundaries of two Canadian Provinces and the New York State Line. Given its unique location, the 7,000 members of this community would be devastated by the WHTI if implemented in its current form. For example, the Akwesasne Mohawk Casino attracts over 600,000 visitors annually, with approximately 50 percent of their guests hailing from Canada.

These are only a few examples of the local economies that would be devastated by new onerous travel restrictions. Their stories are shared by border communities throughout the U.S. and Canada, and the total economic impact adds up quickly. One detailed analysis by the Conference Board of Canada found that new border identification requirements could result in a loss of 3.5 million trips to the U.S. and more than twice this number from the U.S. to Canada, at an estimate annual loss to the U.S. tourism industry of \$785 million and the Canadian tourism industry of \$1.7 billion. An updated analysis by this group completed just a few months ago concluded that the U.S. is expected to lose approximately 7.4 million inbound person-trips and



\$2 billion in travel receipts by 2010. A separate report estimates that the net impact on tourism spending in the U.S. from the loss of visits from Ontario alone would amount to \$170 million 2008.

Given the considerable evidence that the WHTI would have a dramatic and negative effect on the economies of border communities, it is troubling that State and DHS still have not conducted a review of the economic impact of the Initiative, and have not completed a single cost-benefit analysis of their proposed passport card requirement and potential alternatives. In fact, in the notice of proposed rulemaking, State continues to take the position that a passport card rule is not an “economically significant regulatory action,” that the rule is “not likely to have an annual effect on the economy of \$100 million or more or to adversely affect in a material way the economy . . . or State, local, or tribal governments or communities,” and therefore no rigorous cost-benefit analysis is necessary under the law at all.

This position has begun to strain credulity. Even setting to one side the overwhelming evidence that the Initiative will have a dramatic annual impact on the economy of border states, State itself estimates that 6.8 million (or about 51 percent) of U.S. citizens who visited Canada in 2005 did not possess a passport. Even if only a fraction of those individuals were to purchase a passport card in a given year, the sale of the card itself would have an economic impact of more than \$100 million in that year.<sup>2</sup> Of course, if most of these individuals choose not to purchase the necessary documents to cross the border, the impact on cross-border trade will be even more significant.

The Government Accountability Office concluded earlier this year that DHS and State had yet to make many key programmatic and technical decisions regarding the Initiative, that the remaining issues present numerous challenges, and that DHS has not requested any funds to implement the Initiative in 2007. Congress has given the Administration an extra year and a half in order to implement new border crossing rules with care. Once again, in the strongest possible terms, I urge the Administration to use the additional time to perform a rigorous and comprehensive analysis of the costs and benefits of the Initiative and the passport card requirement, with an emphasis on the impact the requirements would have on the economies of our border communities, and a careful review of alternatives. The stakes are far too high for the Administration to continue to march forward in the dark on this important issue without any understanding of the economic consequences of its proposed plan.

Of course, this issue is not solely driven by economics. The people who live in these shared border areas do not regard themselves as Americans or Canadians, but rather as one community of neighbors. American children play sports in Canadian youth leagues. Canadian families visit relatives who live in the U.S. Americans and Canadians frequent each others homes and businesses with little regard for the demarcation of the border. Limiting their ability to interact by forcing upon them the restrictions outlined in the Initiative would create a wall splitting one community into two.

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<sup>2</sup> Frank Moss, State’s Deputy Assistant Secretary for Consular Affairs, has testified that WHTI will cause 5 million travelers to purchase a passport by 2009.

For example, the Mohawk people often take several trips across the border each day and account for approximately 70 percent of border traffic in the area. Imposing upon them the type of travel restrictions contemplated by the Initiative would have a detrimental effect on many aspects of their daily lives. Perhaps most disturbing, the Initiative could interrupt the cross-border travel of 1,300 Mohawk students living on the Canadian side of the border who attend the Salmon River and Massena school districts located on the U.S. side.

Potential issues with the proposed passport card extend beyond their impact on border communities. Many of my constituents are concerned about the security of the information that would be contained on the card. The notice announces that the proposed passport card would use "vicinity read" radio frequency identification (RFID) technology. However, State and DHS do not appear to have tested this technology for use in a personal ID card, and a number of industry and privacy groups have voiced serious concerns that the RFID technology gives rise to several privacy and security concerns and that other options are preferable. Border identification requirements will not be successful unless people are confident that their personal information is secure. I urge State and DHS to give careful consideration to concerns that it has chosen the wrong technology for its program.

I appreciate the opportunity to provide comment on the proposed passport card. This is a vital and complex issue for our nation, and I am hopeful that we can find a solution that properly balances our mutual interest in a secure Northern Border with our desire to maintain communities that are both economically and socially vibrant.

Sincerely yours,

A handwritten signature in blue ink that reads "Hillary Rodham Clinton". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Hillary Rodham Clinton